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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems	)))))	IB Docket No. 95-41

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To: The Commission

COMMENTS OF CORPORACIÓN MEDCOM

Corporación Medcom, S.A. de C.V. ("Medcom"), by its attorneys, hereby submits its comments on certain issues raised by the Notice of Proposed Rulemaking ("NPRM"), FCC 95-146, released April 25, 1995, in the above-captioned proceeding.

I. INTRODUCTION

The primary focus of the NPRM is on the Commission's proposal to permit U.S.-licensed domestic fixed service satellites ("domsats") and international separate systems satellites ("separate systems") to provide both domestic and international services on a co-primary basis, thereby removing the constraints imposed on domsats by the Commission's "transborder" policy[1/] and on separate systems by the general prohibition on their provision of domestic services.[2/] Toward the end of the NPRM, the Commission also inquired whether, assuming that the foregoing policy

[1/] See NPRM at ¶¶ 4-9.

[2/] Id. at ¶¶ 10-12.

changes are adopted for domsats and separate systems, they should be extended to direct broadcast satellite ("DBS") services.[3/]

As described in detail below, significant developments currently are underway in the United States of Mexico ("Mexico") that are directly related to, inter alia, DBS service providers. The Commission should proceed with its proposal to "internationalize" DBS service with the utmost sensitivity to the emerging policies of the Government of Mexico. Failure to do so could significantly damage both the nascent Mexican DBS industry and the U.S. DBS licensees.

II. STATEMENT OF INTEREST

Medcom is a privately held company organized under the laws of Mexico. Directly or through affiliated enterprises, Medcom operates radio and television stations and an independent news service throughout Mexico. Most recently, Medcom has been granted a concession by the Federal Government of Mexico, through the Secretary of Communications and Transportation, to establish and operate a DBS service for Mexico. Thus, Medcom is vitally interested in those portions of the NPRM that could have the effect of expanding the geographic market available to essentially all North American DBS services.

[3/] Id. at ¶ 38.

III. GENERAL INTERNATIONAL POLICY CONSIDERATIONS

As a result of geographical proximity and the North American Free Trade Agreement ("NAFTA"), the economies of Mexico and the United States are deeply and increasingly interrelated. As the Secretary of Communications and Transportation of Mexico recently stated, in comments filed in another Commission proceeding:

> [T]he development of advanced and efficient communications systems and services serving the two countries is a fundamental requirement for the continuation and growth of trade between the United States and Mexico.[4/]

It is mutually beneficial for the United States and Mexico to develop telecommunications policies in a cooperative manner, based on equal treatment and mutual respect. Thus, the Commission must take serious account of the effect of its decisions, not only on the U.S. marketplace, but also on the Mexican and North American markets. Again quoting the Secretary of Communications and Transportation of Mexico:

> Neither country's policy should be structured as the unilateral imposition of political requirements on the other, or the erection of barriers to market entry, the removal of which is necessarily conditioned upon the acceptance by one country of the political and regulatory policies of the other.[5/]

4/ Comments of the Secretary of Communications and Transportation of Mexico, In the Matter of Market Entry and Regulation of Foreign-affiliated Entities, IB Docket No. 95-22 (filed April 11, 1995) at 2.

5/ Id. at 3.

In shaping the DBS policy proposed in the NPRM, the Commission obviously must take into account the various constraints imposed by international law. The Commission correctly notes that it cannot unilaterally authorize its licensees to provide DBS service in foreign markets; the consent of the relevant foreign government also must be obtained.[6/]

What may be less obvious -- but is of equal import -- is the need, based on international comity as well as practical considerations, for the Commission to take into account both the relevant laws of those nations that will most directly feel the impact of this new U.S. policy, and the cultural and historical imperatives that underpin those laws. The introduction of U.S.-based DBS services in a foreign market could implicate vital cultural and historical considerations that transcend the sort of financial concerns that may attend the internationalization of U.S.-based domsat services.[7/]

[6/] See, e.g., NPRM at ¶ 38.

[7/] An example of this cultural element can be found in Canada's recent liberalization of its DBS licensing law, to permit the distribution of foreign-owned DBS services, provided that an appropriate deference is paid to Canadian cultural concerns. See "Directions to the CRTC (Direct-to-Home (DTH) Satellite Distribution Undertakings) Order" and "Directions to the CRTC (Direct-to-Home (DTH) Pay-Per-View Television Programming Undertakings) Order" (issued by the Canadian Minister of Heritage on April 26, 1995).

IV. MEXICO'S NEW TELECOMMUNICATIONS LAW

On June 7, 1995, Mexico adopted a new Federal Telecommunications Law (the "Telecom Law").[8] The Telecom Law authorizes, inter alia, the transmission of DBS services into the territory of Mexico by satellite systems licensed by both Mexico and other countries.

The Telecom Law provides for a public bidding procedure to obtain a Mexican DBS license. While only Mexican entities are eligible to hold such a license, Article 12 of the Law provides that such entities may have up to 49% percent foreign ownership.[9]

In addition to this liberal foreign ownership provision, Mexico will permit foreign-licensed DBS systems to market their services in Mexico, consistent with the terms of a bilateral agreement to be negotiated among the Government of Mexico and the government of the nation that has licensed the subject DBS system. Such an agreement must provide for reciprocal access to the latter's market for Mexican-licensed DBS systems.[10]

8/ An official English translation of the Telecom Law is not yet available. If the Commission's staff wishes to review the Spanish text, a copy will be made available by Medcom.

9/ Telecom Law at Section I, Article 12. This should be juxtaposed to the limitations imposed on the ownership of U.S.-licensed DBS systems, which, in general, must be at least 75% owned by U.S. citizens. See 47 U.S.C. § 310(b)(4).

10/ Telecom Law at Section IV, Article 30.

Thus, the Telecom Law incorporates two basic principles that Medcom believes the Commission should embrace in this proceeding. First, in requiring direct negotiations among the Government of Mexico and other nations to provide for access to the Mexican market, the Telecom Law recognizes the sensitive nature of such cross-border traffic in information and ideas. Second, the Telecom Law requires reciprocal treatment for Mexican DBS providers. Any modification of the U.S. DBS service regulations should similarly make clear the conditions under which the U.S. DBS market will be open to foreign competition.[11/]

V. THE COMMISSION SHOULD DEVISE A MECHANISM TO CONTROL THE "GREY MARKET" ACTIVITIES OF U.S. DBS LICENSEES AND THEIR AGENTS.

As the Commission may be aware, a substantial "grey market" is developing in both Mexico and Canada involving the reception of U.S. DBS and "quasi" DBS (i.e., the C-band TVRO services) signals. Obviously, the Commission has not authorized its DBS licensees to provide

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[11/] The proposed deregulation of international receive-only earth stations under consideration in CC Docket No. 93-23, even if adopted, would not appear to cover the reception of foreign DBS signals. See Notice of Proposed Rulemaking, 8 FCC Rcd 1720 (1993). See also Regulation of Receive-Only Satellite Earth Stations, 74 F.C.C.2d 205, 219 n.27 (1979). If the Commission views Intelsat's evolving relaxation of the Article XIV(d) coordination process with regard to non-PSTN services to be sufficiently broad to cover DBS services, see NPRM at ¶¶ 5-15, it should make clear that U.S. residents are free to receive foreign DBS signals.

such service, and with regard to Mexico, where the C-band services form the predominant component of the grey market, the Mexican government has not authorized any such activities. Nonetheless, the grey market thrives.[12]

The existence of this sort of grey market can have a substantial adverse impact on the development of a domestic DBS service. Given the extraordinary level of investment required to establish a DBS system, an existing grey market represents a significant disincentive for an otherwise willing entrepreneur. This is particularly the case where the basic DBS license must be purchased at auction, as is now required by the Telecom Law. In short, a grey market can thwart even the long-range pro-competitive policies of a foreign government.

Thus, regardless of whether or how the Commission decides to eliminate the domestic service constraints currently imposed on U.S. licensees, it must adopt a mechanism that will enable a foreign DBS licensee, whose home market is being "invaded" by an unauthorized U.S.-based service, to protect its interests. Obviously, the foreign

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[12] In at least some cases of which Medcom is aware, the C-band service "dealers" operating in the Mexican market not only sell the necessary reception and decoding equipment but also receive a program subscription fee from the customer, which apparently is passed on to the U.S. programmer. It is Medcom's understanding that these dealers record their sales to Mexican subscribers under fictitious U.S. addresses. It is unclear as to the extent to which the programmer (and its program suppliers) know of or condone such practices.

DBS licensee can (and presumably would) have recourse to its own government, but that government would have no jurisdiction over the transmissions of the U.S. licensee, making it difficult for that government to fashion a practical remedy. Similarly, reliance on a "government-to-government" complaint process alone would be unduly cumbersome. To the extent that the Commission wishes to encourage foreign governments to open their markets to U.S. DBS services, it should also enable foreign DBS licensees to protect against unauthorized distribution of U.S. DBS services.

CONCLUSION

Any effort to facilitate the foreign distribution of U.S.-licensed DBS services must evidence the U.S. Government's willingness to address directly with the foreign government in question the numerous sensitive cultural and economic questions that would be implicated by such international DBS services, including issues relating to reciprocity. It is extremely important for the Commission to take into account all the direct and indirect effects of internationalizing DBS services.

Independent of any deregulatory steps -- but certainly as part of a deregulatory package, if one is adopted -- the Commission should establish a mechanism to enable foreign DBS licensees to seek the Commission's assistance in terminating the unauthorized provision of international service by U.S.-licensed DBS companies.

Finally, the Commission must avoid any action that effectively leads to the unilateral imposition of U.S. regulatory policies on foreign markets. In its continuing efforts to encourage competition, the Commission must not lose sight of the fact that not all nations' markets have developed along the same lines as their U.S. counterpart, and that other cultures have traditions and concerns distinct from those that drive the Commission's regulatory agenda.

Respectfully submitted,

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